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 UNITED STATES OF AMERICA

10 UNITED STATES DISTRICT COURT

11 FOR THE CENTRAL DISTRICT OF CALIFORNIA

12 UNITED STATES OF AMERICA,	) CR No. 04-820(A)-DSF
13)
Plaintiff,	) <u>GOVERNMENT'S REPLY MEMORANDUM IN</u>
14	) <u>SUPPORT OF DECLARATION OF BREACH</u>
v.	) <u>OF PLEA AGREEMENTS BY DEFENDANTS</u>
15	) <u>AND MOTION FOR FINDINGS OF BREACH</u>
OLEG REITBLAT,	) <u>BY THIS COURT; SUPPLEMENTAL</u>
16 SOPHIE VOLOVNIK, and	) <u>DECLARATION OF DARRELL TWEDT;</u>
WEBTRANSCRIBERS,	) <u>EXHIBITS</u>
17 a California Corporation,)
	) Hearing Date: 6/6/2011
18 Defendants.	) Hearing Time: 8:30 a.m.
)
19	) [UNOPPOSED EX PARTE APPLICATION
20	) AND [PROPOSED] ORDER FOR LEAVE TO
	) LATE-FILE SUBMITTED CONCURRENTLY]
21)

22 Plaintiff United States of America, through its counsel of
 23 record, the United States Attorney's Office for the Central
 24 District of California, hereby files its reply to Defendants'
 25 Opposition to Government's Motion for Breach of Plea Agreements,
 26 which defendants filed on May 27, 2011.

27 This reply is late-filed (it was due on Memorial Day, May
 28 30, 2011), and the government seeks leave to late file in a

1 concurrently-submitted, unopposed ex parte application.

2 This reply is based upon the attached memorandum of points
3 and authorities, the declaration of Darrell Twedt, the attached
4 exhibits, all the files and records of this case, and such other
5 evidence as the Court may admit at the time for hearing of this
6 motion.

7 DATED: June 2, 2011

Respectfully submitted,

8 ANDRÉ BIROTTE JR.
United States Attorney

9 ROBERT E. DUGDALE
10 Assistant United States Attorney
11 Chief, Criminal Division

12 /s/
13 BRUCE H. SEARBY
Assistant United States Attorney

14 Attorneys for Plaintiff
15 UNITED STATES OF AMERICA
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REPLY MEMORANDUM

I.

INTRODUCTION

In their opposition to the government's motion for finding of breach of their plea agreements ("Defs. Opp."), defendants OLEG REITBLAT, SOPHIE VOLOVNIK, and WEBTRANSCRIBERS, a California Corporation, tacitly concede that their plea agreement required them to cease their involvement in medical-related business activities that led to their convictions and to the possibility of charges for still other offenses. Their response to the government's allegation that they were nonetheless running the medical transcription business Typeworks, purportedly owned by their daughter, Rita Zass, is to deny involvement with Typeworks, except for the most incidental of contacts.

The Court should see through these denials of two driven business owners who were unwilling to stop the business they built, and instead have secretly carried it on using their daughter as a front. Defendants' factual presentation, which does not include any statements by defendants REITBLAT and VOLOVNIK themselves, has glaring holes and contradictions in it, as discussed below. Moreover, defendants' claim not to have been involved regularly with Typeworks and its interpreting physicians is refuted by toll records the government has now received for defendants REITBLAT and VOLOVNIK. The extensive telephone calls between defendants, on the one hand, and Typeworks and these physicians, on the other hand, are summarized in the case agent's

1 supplemental declaration, attached hereto. Finally, defendants
2 dismiss as "hearsay" the statements Dr. Chespak, who tells of a
3 business relationship with Typeworks principally through
4 defendant REITBLAT. This went on for years until its discovery
5 by the government in August 2010, causing Dr. Chespak to inform
6 defendant REITBLAT that he was terminating his work, which sent
7 defendant REITBLAT into a "panic; saying [Dr. Chespak] should
8 have given him more notice and that [Dr. Chespak] was leaving him
9 out in the cold." (Gov. Mot. Exh. A). The government has
10 subpoenaed Dr. Chespak to testify at the hearing in this matter.

11 Based on the new evidence in reply to defendants'
12 opposition, that previously offered by the government in its
13 moving papers, and such testimony as the Court may hear, the
14 Court should find that defendants breached their plea agreements.

15 II.

16 SUPPLEMENTAL STATEMENT OF FACTS

17 As set forth in the attached Declaration of Darrell K. Twedt
18 ("Supp. Twedt Decl."), the FBI special agent ("SA") assigned to
19 the instant case, telephone toll records further establish the
20 heavy involvement of defendants REITBLAT and VOLOVNIK with the
21 daily business of Typeworks and its interpreting physicians
22 referenced in the government's moving papers.

23 SA Twedt reviewed toll records of calls for the telephone
24 number 818-943-9776, which belongs to "Sophie Volovnik,"
25 according to ATT's subscriber information record and the business
26 card for defendant VOLOVNIK exhibited by defendants. (Supp.

Twedt Decl. ¶ 2; Exhibit C, attached hereto; Defs. Opp. Exh. 2). For the period from July 2008 to August 2010, SA Twedt found approximately 435 calls from Typeworks' number, 818-781-5377 (Defs. Opp. Exh. 2), to defendant VOLOVNIK's number, 818-943-9776, occurring at all times during regular business hours and sometimes lasting several minutes. (Supp. Twedt Decl. ¶ 3; Exhibit D, attached hereto). During the same time period, there were approximately 601 calls from defendant VOLOVNIK's number to the Typeworks number. (Supp. Twedt Decl. ¶ 4; Exhibit D, attached hereto). From July 2008 to March 2010, defendant VOLOVNIK also had approximately 36 calls to or from Dr. Chespak at 818-400-7785. (Supp. Twedt Decl. ¶ 5; Exhibit E, attached hereto).¹

SA Twedt also reviewed toll records of calls for the telephone number 213-505-2280, which is the number defendant REITBLAT had previously given to SA Twedt as his own. (Supp. Twedt Decl. ¶ 6). For the 16-day period between August 2, 2010 and August 17, 2010 (when the FBI began interviewing the interpreting physicians), SA Twedt found approximately 60 calls back and forth between defendant REITBLAT's and Typeworks' number. (Supp. Twedt Decl. ¶ 7; Exhibit F, attached hereto). SA Twedt found a similar calling pattern going at least as far back as January 2010. (Supp. Twedt Decl. ¶ 7). For the period December 2009 through August 2010, defendant REITBLAT also had

¹ SA Twedt did not find any calls with Dr. Heric at 310-413-6409. (Twedt Supp. Decl. ¶ 5).

1 approximately 29 calls back and forth with Dr. Chespak. (Supp.
2 Twedt Decl. ¶ 8; Exhibit G, attached hereto). For the period
3 December 2009 through November 2010, defendant REITBLAT had
4 approximately 22 calls back and forth with Dr. Heric. (Supp.
5 Twedt Decl. ¶ 9; Exhibit H, attached hereto).

6 III.

7 DISCUSSION

8 A. Toll Records Belie Defendants' Claimed Non-Involvement

9 In various ways, these toll records belie defendants' claims
10 in their opposition brief that they were not involved heavily in
11 Typeworks' business, including its relations with Dr. Heric (a
12 convicted felon) and Dr. Chespak.

13 First, the agent's toll analysis shows there was a heavy and
14 continuous volume of calls during the business day between
15 Typeworks' number and both defendants REITBLAT's and VOLVONIK's
16 numbers. Defendants attempt to explain why Typeworks' secretary
17 might on occasion have needed to call defendants' cellphone
18 numbers to reach Rita Zass. However, it is simply not credible
19 that, as the bona fide owner of a business, Zass had to depend on
20 communicating with her business through her parents at home
21 during business hours, daily or multiple times daily, for years.

22 Defendants REITBLAT and VOLVONIK each spoke by phone with
23 Dr. Chespak every two to three weeks on average, according to the
24 toll analysis. This cannot be reconciled with defendants' claim
25 that they did not discuss Typeworks business with Dr. Chespak,
26 including the unsupported assertion: "Although they did work
27
28

1 together and speak previously regarding Webtranscribers [which
2 defendants claim closed in late 2006], Mr. Reitblat has never
3 called Chespak regarding Typeworks." (Defs. Opp., at 3). In
4 fact, defendant REITBLAT called Dr. Chespak's number 19 times
5 spread over the 9-month period that SA Twedt analyzed,
6 corroborating Dr. Chespak's statements that he dealt with
7 defendant REITBLAT in connection with Typeworks.

8 Defendant REITBLAT also conversed with Dr. Heric
9 approximately every two weeks during business hours. Defendant
10 REITBLAT does not claim there was other business, or a strong
11 social bond, between the two men that explained all these calls.
12 Nor does Rita Zass supply an explanation for defendant REITBLAT,
13 such as by saying that she made the calls from his phone. To the
14 contrary, Zass told the defense investigator that the
15 receptionist for Typeworks, Diana, "is the person that talks to
16 [Dr. Heric] on the phone." (Defs. Opp. Exh. 1, at 5).

17 B. Defendants Story About Typeworks' Origin Is Not Credible

18 Defendants' opposition lacks any credible and coherent
19 narrative of how their daughter, Zass, wound up running a
20 business just like the defunct Webtranscribers -- but without
21 their significant involvement. Indeed, evidence they have
22 submitted to the Court contradicts their argument.

23 Defendants claim they received no financial benefit from
24 Typeworks, and were not involved in its set-up in any way beyond
25 defendant VOLOVNIK registering the phone lines in her name and
26 briefly answering phones. The defense investigator relates

1 statements by Zass that she began Typeworks using her knowledge
2 of her parents' business, Webtranscribers, but that her parents
3 were never involved in Typeworks. Zass provided nothing beyond
4 these vague statements to explain how she managed to obtain the
5 interpreting physicians' services, the transcription operations
6 in India, the personnel in the United States, or the computing
7 and communications equipment to run Typeworks.

8 Buried in his report, the defense investigator quotes Dr.
9 Heric as stating:

10 Oleg and his wife sold the business to a woman that he
11 only knows as "Mrs. Cass", who now runs the business.
12 When asked if "Mrs. Cass" could actually be a person
13 named Rita Zass, Dr. Heric stated, "That's it. She's
14 the one".

15 (Defs. Opp. Exh. 2, at 2).

16 If defendants "sold" their business to their daughter, it
17 would still contradict their claim of non-involvement in, and no
18 benefit from, Typeworks repeated throughout their opposition
19 brief. Such a purported sale also would be inconsistent with
20 their plea agreements unless it received the approval of the
21 United States Probation Officer, which defendants did not claim
22 took place. Finally, this sale should have been disclosed to the
23 government during the parties' discussions over the past several
24 months about the corporate and financial status of defendant
25 WEBTRANSCRIBERS -- but there was no disclosure.²

26 ² Defendants have still not provided any explanation to
27 then government of what happened to the office equipment worth
28 over \$106,000 at the time of purchase that was listed on the
depreciation schedule of defendant WEBTRANSCRIBERS' 2006 tax
return. (Gov. Mot. Exh. 2, at 20).

1 The following inferences must be drawn from these facts:

- 2 • Defendants effectively re-incorporated their pre-
3 existing transcription business, which was served
4 by interpreting physicians including Dr. Heric and
5 Dr. Chespak and by transcribers based in India,
6 and which was extensively equipped and staffed
7 here in Los Angeles.
8 • Defendants put the new entity taking over the old
9 assets and operations into the name of their
10 daughter, who serves as their front and who has
11 unconvincingly attempted to cover for them in the
12 opposition to the government's instant motion.
13

14 The breach of the plea agreements that this conduct
15 constitutes, plus the dishonesty of the defendants in now denying
16 the breach, are compelling reasons for this Court to find a
17 breach and thereby to free the government from its obligations to
18 recommend lenient sentences.

19 IV.

20 CONCLUSION

21 For the foregoing reasons, the government respectfully moves
22 the Court to find that defendants have breached their plea
23 agreements.

24 DATED: June 2, 2011

Respectfully submitted,

25 ANDRÉ BIROTTE JR.
United States Attorney

26 ROBERT E. DUGDALE
Assistant United States Attorney
Chief, Criminal Division

27 /s/
BRUCE H. SEARBY
Assistant United States Attorney

28 Attorneys for Plaintiff
UNITED STATES OF AMERICA

SUPPLEMENTAL DECLARATION OF DARREL K. TWEDT

I, Darrell K. Twedt, hereby declare the following to be true and correct:

1. I am a Special Agent ("SA") with the Federal Bureau of Investigation ("FBI") assigned to the Los Angeles Field Office and have been employed in this position since February 2005, and I am the case agent assigned to this case. This declaration is filed in support of the GOVERNMENT'S REPLY MEMORANDUM IN SUPPORT OF DECLARATION OF BREACH OF PLEA AGREEMENTS BY DEFENDANTS OLEG REITBLAT AND SOPHIE VOLOVNIK AND MOTION FOR FINDINGS OF BREACH BY THIS COURT. This declaration does not purport to set forth all the information known to me about this investigation.

2. I have received in the last week telephone toll records that further establish the heavy involvement of defendants REITBLAT and VOLOVNIK with the daily business of Typeworks and its interpreting physicians referenced in the government's moving papers. I reviewed toll records of calls for the telephone number 818-943-9776, which belongs to "Sophie Volovnik," according to ATT's subscriber information record, attached hereto as Exhibit C.

3. For the period from July 2008 to August 2010, I found approximately 435 calls from Typeworks' number, 818-781-5377 to defendant VOLOVNIK's number, 818-943-9776, occurring at all times during regular business hours and sometimes lasting several minutes. Exhibit D, attached hereto, is a spreadsheet of these

calls that I compiled from the toll records. During the same time period, there were approximately 601 calls from defendant VOLOVNIK's number to the Typeworks number. These are also compiled in Exhibit D.

4. I found that, from July 2008 to March 2010, defendant VOLOVNIK also had approximately 36 calls to or from Dr. Chespak at 818-400-7785, listed on the spreadsheet attached hereto as Exhibit E.

5. I did not find any calls with Dr. Heric at 310-413-6409.

6. I also reviewed toll records of calls for the telephone number 213-505-2280, which is the number defendant REITBLAT has given to me as his own.

7. For the 16-day period between August 2, 2010 and August 17, 2010 (when the FBI began interviewing the interpreting physicians), I found approximately 60 calls back and forth between defendant REITBLAT's and Typeworks' number, listed on Exhibit F attached hereto. I found a similar calling pattern going at least as far back as January 2010.

8. For the period December 2009 through August 2010, defendant REITBLAT also had approximately 29 calls back and forth with Dr. Chespak, listed on a spreadsheet attached hereto as Exhibit G. For the period December 2009 through November 2010, defendant REITBLAT had approximately 22 calls back and forth with Dr. Heric, listed on a spreadsheet attached hereto as Exhibit H.

The foregoing is sworn under the penalty of perjury pursuant to federal law this 2nd day of June, 2011, in Los Angeles, California.



Darrell K. Twedt